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JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor.

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FOURTH SERIES

II

TOWN GOVERNMENT
IN
RHODE ISLAND

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BALTIMORE
N. MURRAY, PUBLICATION AGENT, JOHNS HOPKINS UNIVERSITY
FEBRUARY, 1886

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BALTIMORE.

TOWN GOVERNMENT
IN
RHODE ISLAND.[1]

The application of the comparative method to the study of early American history has within recent years been attended with results of the most substantial value. The scattered communities along the Atlantic coast which, since 1776, have been united in a common bond of government had their origin in widely diverse sets of conditions. While, therefore, their development has been characterized by institutions bearing a general analogy to each other, there is sufficient individuality and local differentiation to be observed in any one instance, to render a somewhat close comparison of their points of resemblance and difference extremely serviceable. It is plain, moreover, that, the farther down in the scale of local division we can go, the more fruitful will be the study of these local institutions.

While, then, the nation is made up of the several States,—once colonies or provinces,—and while the States are made up of counties; we need to notice that, descending still farther, the counties are made up of towns, or, as in some States, parishes. We may pass, for our present purpose, any consideration of the counties[2] in connection with this question.

[1] Read before the Rhode Island Historical Society, Jan. 22, 1884, and before the Historical Seminary, Johns Hopkins University, April 18, 1884.

[2] See Dr. Edward Channing's paper, on "Town and County Government, in the English Colonies of North America," Johns Hopkins University Studies, 2d series, X.

While in the Middle and Southern Colonies, owing to the scattered condition of the population, and the comparative fewness of compact settlements, the county became a more important political division than the town,—in all the New England Colonies, on the other hand, the county has never possessed any political significance.[1] It has been merely a convenience of administration.

In the town, however (as existing in New England), we find most of the conditions for a unit of government. Its territory is not too large for efficient combination and coöperation. Its population is, in general, compactly massed. Its citizens are a homogeneous whole. To this it should be added that the town, in all the New England Colonies, has from the first had a strong hold upon the interest of the citizens. This was noticed by M. de Tocqueville,[2] who so long ago as 1835, declared that the coöperation of the citizen "insures his attachment to its interest; the well-being it affords him secures his affection; and its welfare is the aim of his ambition, and of his future exertions." The strong hold which the doctrine of States-rights has always had in the colonies and States south of Mason's and Dixon's Line, has been a striking fact in our political history. To a far greater extent than in New England, the States have, in the South, rivalled the national government, in the interest, the concern, and the affection of the citizens. Is not this difference to be explained, in part, by the fact that in New England the town has been almost as formidable a rival as the State, in this respect? It has thus, perhaps, resulted, that between the two tendencies, the regard for the national government has not, in New England, been materially encroached upon.

In this paper we shall examine some of the peculiar and interesting conditions under which this institution—the town—has manifested itself in Rhode Island; indicating the con-

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[1] In R. I., county officers have no functions beyond those of the courts.

[2] "Democracy in America," (Ed. 1862), I., p. 85.

trast to be observed between the beginnings of government here and in the other New England colonies, and also some of the marked characteristics which have continued to distinguish the local institutions of Rhode Island to this day.

The Independent Origin of the Towns.

The colony of Rhode Island differs from the colony of Massachusetts Bay, for instance, or from the colony of Pennsylvania, in the fact that her settlement was not a deliberate act resulting from a formed purpose. The elements of which the colony came in time to be composed were at first entirely independent of each other. Rhode Island, moreover, had no deliberate "founder," in the strict sense of the word. It is true that such honor and distinction as we have come to associate with the name of founder, belong in Rhode Island to Roger Williams, in virtue of the many and signal services which he rendered to this colony, and the far-reaching influence which has followed his self-sacrificing labors. Yet it is only necessary to compare his coming to Rhode Island with that of Winthrop to Massachusetts Bay, or that of Penn to Pennsylvania, to see that his agency in the matter was not the result of a conscious purpose. There is certainly nothing to show that Roger Williams came from England to America with the intention of founding a colony. Nor is it clear that he brought with him from Salem to Providence any intention quite so distinct as that. He left Salem because of the official measures taken against him by the Massachusetts government. In steering his "course to Narragansett Bay,"[1] to use his own language, his benevolent intentions were, upon his own testimony, in behalf of the Indian occupants of the soil (with whom a few years earlier he had had several interviews), rather than in behalf of any countrymen of his own, for

[1] Narragansett Club Publications, VI., p. 335.

whom a colony might thus be founded. His primary purpose, he afterward declared, was "to do the natives good and to that end to have their language."[1] He even adds more explicitly that he "desired not to be troubled with English company." It is quite true that he was not without English company,—either in his journey from Salem, or in his short stay on the banks of the Seekonk, or in his final settlement here at Moshassuck. But it is perfectly obvious that this "company" was almost forced upon him. "Out of pity," he declares, "I gave leave to several persons to come along in my company," and accordingly he was joined by Harris, Smith, Angell and Wickes.

But Williams's mind was one which felt very readily the weight of any strong consideration—particularly a benevolent one. And so, enlarging his original intention, he considered, to quote once more his own language, "the condition of divers of my distressed countrymen."[2] The result was that he advanced at last to the distinctly formed plan of "a shelter for persons distressed for conscience."

But when did he thus enlarge his conception? We must look a little backward, and a little forward as well, from the month of January, 1636, in which he left Salem. So early as the previous October the sentence of expulsion[3] had been passed. That the intervening three months should not have been partly given up to carefully weighing and considering the matter with his Salem friends would not be quite natural.

It is in this light that we may read Governor Winthrop's entry in his Journal, on hearing of Mr. Williams's departure, —that "he had drawn above twenty persons to his opinion, and that they were intended to erect a plantation about the Naragansett Bay."[4] The matter had reached that stage.

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[1] Williams's testimony, Nov. 17, 1677, Proceedings of Harris Commission.

[2] R. I. Col. Records, I., p. 22.

[3] See the examination of this "Sentence of expulsion," in the Rhode Island Historical Society's "Collections," VII., pp. 95–100.

[4] Winthrop's Journal, I., p. 175.

Let us now look forward from January, 1636, and see how gradually and in what an unpremeditated[1] manner this infant "Plantation about the Naragansett Bay"—this "shelter for a few of his distressed countrymen,"—developed by slow and gradual stages into a chartered colony. Not until August do we come upon the noteworthy agreement, August 20, 1636, of those who were "desirous to inhabit in the town of Providence."[2] By this act they signified their readiness to submit to whatever arrangements might be found desirable, "only in civill things," by their thirteen predecessors, whom they mention as the "present inhabitants." This, so far as any documents now remaining to us are concerned, was the beginning of the organization known as "the town of Providence," though the language, "Towne meeting" is used in an entry dated June 16.[3]

"The town of Providence." And what were the boundaries of this town of Providence? Whose territories marched with it on the north, on the west, and on the south; and by what charter or official sanction did it hold? Boundaries it had none, until the Indian deeds[4] approximately—and only approximately—marked them out. With those of no other English settlements did any of its lines coincide, except that it was known to lie somewhere west of the Plymouth Colony. It was, in fact, a settlement in the wilderness with undetermined bounds. And by no charter or documentary authority, from white men, was it secured in its possessions.

Here, then, in the North, was "the town of Providence,"—Williams's town. But at about the same time, another company of his "distressed countrymen,"—most of them residents

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[1] Compare R. I. Hist. Soc. Collections, VII., pp. 101–3.

[2] R. I. Col. Records, I., p. 14.

[3] R. I. Col. Records, I., p. 12.

[4] Printed in R. I. Col. Records, I., pp. 18, 22–25, 31–38. See also the *Narragansett Historical Register*, II., pp. 222–25, 287–97, where they are carefully reprinted.

of Boston—had determined to remove to some place. They were avowedly attracted by this beautiful bay, with its fertile shores and its then delightful climate. They finally settled near the northern end of the island known as Rhode Island. This was the beginning of the town of Portsmouth. But what relation existed between the town of Providence and the town of Portsmouth? None whatever. They were not two members of the same colony. They were not even two organizations planted by the same authority. Nothing but the word "independence" properly characterizes their attitude, both to each other, and to the rest of America. Allegiance to the King (and later to the Commonwealth) was all that they acknowledged.

These were the two parent settlements. In a short time there came to be a settlement at Newport, as an outgrowth of that at Portsmouth; and one at Warwick, in part settled by Portsmouth men and in part by Providence men. But though, historically, this was the origin of Newport and Warwick,—politically the towns of Newport and Warwick acknowledged no connection and no obligation, at first and for some time. The first instance of coalescing, or running together in any way, was in the case of the two towns on Rhode Island,—Portsmouth and Newport,—and this occurred four years after Roger Williams came to Providence. It was not until 1647, more than ten years after the beginning of Williams's settlement, that the four towns came together under a common government, and that any such entity as a "Colony of Rhode Island" existed.

Let us see how this consolidation, and creation of a colonial government came about. There are doubtless other causes than those which are now recognized, but the chief agencies appear to be three in number: First, a common purpose animating these settlers; second, the danger of a common opponent without; lastly, but by no means of least importance, the absolute need, in their internal administration, of "Something" to quote from Judge Staples, "to give stringency to

their laws as among themselves."[1] Up to this date, however, the town of Providence, dating from 1636; the town of Portsmouth, dating from 1638; and the town of Newport, dating from 1639; all three of them during a part of this time (and the town of Providence during the whole of it), existed as independent communities; more so than the two neighboring towns of Salem and Ipswich in the Massachusetts Bay Colony,—more so than the towns of Boston and Springfield in the same colony. To find an analogy, in fact, we cannot stop short of comparing colony with colony, or colony with one of these towns. The town of Providence was, in fact, until 1647, as much an independent, self-centred, community, as the Colony of Massachusetts Bay, or the Colony of Maryland.

Was there not resistance to the proposed consolidation? We may be sure there was. It is not to be imagined that so great power would pass from the hands of the several towns without a struggle. The union was, however, seen to be inevitable, and it was finally brought about; but in such a way that the language of John Quincy Adams, used many years later and with reference to another matter, might with almost equal propriety be applied to this. "The constitution," says Mr. Adams (speaking of the adoption of the United States constitution in 1787–89), "The constitution had been extorted from the grinding necessity of a reluctant nation."[2] And so it might be said of the union of towns[3] which the meeting of the first General Assembly of Rhode Island signalized, in 1647, that it was "extorted from the grinding necessity" of four reluctant towns.

Roger Williams was dispatched to England, and from what was at that time the highest authority in England,—the par-

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[1] "Proceedings of 1st General Assembly," p. vii.

[2] John Quincy Adams's address on "The jubilee of the constitution," 1839, p. 55.

[3] These towns, as the author has elsewhere pointed out, "were scarcely less than little 'States,' in the functions which they exercised." (Foster's "Stephen Hopkins," I., p. 158).

liamentary government,—he obtained the patent of 1643–4.[1] This patent established as one government, "The Incorporation of Providence Plantations, in the Narragansett Bay in New England." Not until this point can we speak of the colony as existing; and it is of distinct importance to notice that, while in the case of most American colonies, the charter has preceded and has been the model of the colony, the order is here reversed, and the charter is rather the outgrowth of the nascent colony with its requirements, more or less urgent, and more or less fundamental. That this latter is the order of nature one need hardly hesitate to acknowledge; nor did twenty years pass before this same natural law of development called for the replacing of this earlier "patent," with the more highly organized "charter" of 1663.

It is well to pause here and notice how different was the experience of Rhode Island in this regard from that of the other New England colonies. The Plymouth settlers, before landing from the Mayflower on American soil, signed in their cabin the memorable compact which combined them into a "civil body politic." The Massachusetts Bay settlers, after obtaining their charter, carefully brought it across the Atlantic with them. The Connecticut settlers planted Hartford under a specific "commission" from the Massachusetts General Court, which was granted,—to quote its language,—in order "that some present government might be observed."[2] But in the scattered communities which grew up on Rhode Island soil between 1636 and 1647, there were lacking not only organic law in common, but even documentary agreement in common, and also any delegation of authority from outside their limits,—until the patent, whose provisions went into operation in 1647.

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[1] See the address of Judge John H. Stiness, Feb. 4, 1885, on "The First Charter," in the R. I. report on "The Providence County Court House," 1885, pp. 13-58.

[2] Mass. Col. Records, I., p. 171. (In the original, abbreviations are used.)

Characteristics of the Towns.

Let us look now at some of the characteristics which marked these local communities from the outset. As a conspicuous example, their extraordinarily exaggerated separatism may be mentioned. In Providence, for instance, this rendered any progress towards formal organization extremely slow. The first organized action is that of the "agreement," signed Aug. 20, 1636, in which thirteen "present inhabitants" are named,—one being Roger Williams. A letter written by Williams to Governor John Winthrop (the elder), at about this very time,[1] is valuable as throwing some light on the condition of mind in which these recluses approached even so rudimentary a measure of local government as this. "We have no patent," he remarks, "nor doth the face of magistracy suit with our present condition."

"Hitherto," he remarks, further on, in the same letter, "the masters of families have ordinarily met once a fortnight, and consulted about our common peace, watch, and planting."[2] But as yet all right of ownership stood in the name of Roger Williams, himself, until, some time in the year 1638, he made over "equal right and power," etc. to his twelve associates. And not until July 27, 1640, did "the inhabitants of the town of Providence" reach the point of a regular election of town officers, and "agree for the towne to choose" the various officers required.[3] So far, indeed, were they from consciously founding a colony, that they thus omitted the actual organization of a town government, by appointment of officers to administer it, until apparently forced to it step by step.

This agreement, says Staples, "went into immediate operation, and constituted the town government for several years."[4]

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[1] In August or September, 1636. (Narragansett Club Pub., VI., p. 4.)
[2] Narragansett Club Pub., VI., p. 4.
[3] Staples's "Annals," pp. 40, 41, 42, 43.
[4] Staples's "Annals," p. 44.

Another thing is significant as showing that the aim of these first settlers was not consciously the founding of a great and extensive centre of business or influence. In the laying of the foundations of other colonies, great care was taken in the choice of the men who were to compose the infant community. Winthrop, at Boston; Bradford, at Plymouth; Hooker, in founding the Connecticut colony;—and, in fact, every deliberate organizer of a colony went out with picked and chosen men,—men who had just the qualities needed to build up a political society. Was this so in the case of the men who came to Providence with Williams? Nay. "It can scarcely be believed," says Mr. Dorr, "that if Williams had known the nature of the work he had unwittingly begun he would have selected as his associates all the men who gathered around him." "Scarcely any, save Williams, had any political experience."[1] They came with him because they had been his friends or associates, or wished to become associates. At Portsmouth, indeed, it was slightly different. Such men as Coddington, Aspinwall, Hutchinson, and Holden were not without experience in political matters; but what this community lacked in unfamiliarity with administration, it would seem to have amply made up in incompatibility of temper.

This latter characteristic, in fact, indicates a third feature in these early town governments,—namely, a lack of harmony. Repulsion, rather than attraction, was to be observed wherever their various elements were brought into contact with each other. They wanted very little else but to be let alone. If any one from outside their limits would come to them, and wished to become one of themselves,—that was one thing. It was quite another thing, however, if they were expected to receive those who simply cared to make visits back and forth, or if they were expected to keep thoroughfares open into the other colonies. For this they had no mind. (We are speaking,

[1] Dorr's "Providence," pp. 6–7.

of course, of the very earliest years of the settlements.) They did not exert themselves for exchange of merchandise by way of trade, nor did they aim at the broadening effect of commercial intercourse, nor did they lay themselves open to outside influence of any kind. Nor, on the other hand, were they much more inclined to cultivate intercourse among themselves. And not only were the different communities frequently at swords' points with each other, but each separate community seemed to be capable of bringing forth an abundance of discordant elements within its own limits. The Portsmouth community found itself at so great difficulty in reconciling itself to Gorton that he withdrew to Warwick. During his brief stay in Providence, antagonism of the most bitter nature had been developed between him and Roger Williams. Between Williams and Harris, however, was an even more bitter contention, which seems to have lasted with unabated vigor to the close of their lives. At Pawtuxet, also, another active opponent of Williams, who, to put it mildly, was capable of somewhat excited invective, existed in the person of William Arnold. In the Newport settlement, William Coddington was a thorn in the side of more than one of the community, and was in frequent collision with William Brenton. And as if this were not enough, the advent of the Quaker element, in 1654, added one more inharmonious note to the chorus of discords.

Another characteristic is to be noted, in the lack of the tendency to organize, in these several communities, in the matter of local institutions. No common meeting-house, no common burying-ground, no common school-house, no common town-house, revealed the fact that these settlers saw before them a future of growth and development, for their newly-planted settlement. On the contrary, says Mr. Dorr, "the fields, the houses, and the barns of the Plantations were the primitive places, both of secular and religious meetings."[1]

[1] Dorr's "Providence," p. 9.

A local community, in the Massachusetts or Connecticut Colony, was, in fact, a crystallization around the meeting-house and the school-house, as a nucleus. In the early town of Providence there was no nucleus of this kind, except the early grist-mill.

Another characteristic is, of course, the now world-renowned principle of separation between the civil and religious functions. Later, it became inseparably associated with the name of the colony; but its origin was in the exigencies of the separate towns.[1]

Functions Exercised by the Towns.

Thus much for some of the characteristics of these towns, but we must consider the functions exercised by them. For these functions, in fact, determined in part their characteristics; and shaped the government which was organized under the two colonial charters; and continued to be exercised in a more or less complete form, long after the adoption of the colonial government.

There is, (as should be expected,) a variation in these particulars in the various towns. Let us look for a moment at the town of Providence, as it existed from 1636 to 1647. The government was at first a pure democracy. Not an aristocracy, in which certain chief members of the community assumed the authority. Not even a representative republic, in which the interests of all were subserved by the delegation of actual legislation to a portion of their number. There was no selection; and there was no delegation. "It would," says Staples,[2] "be interesting to peruse the proceedings of a colony of civilized men, commencing a political existence with the principles of perfect equality, and to mark the

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[1] For an examination of this principle as established in Rhode Island, see R. I. Hist. Soc. Collections, VII., pp. 100–3.

[2] Staples's "Annals of Providence," p. 38.

growth and increase of difficulties which gradually" "led them to the abandonment of their pure democracy, to the delegation of part of their powers, and to the institution of a representative government." But the records are unfortunately meagre.

This was the time when the town of Providence paid no heed nor regard to any other authority whatever, except a king 2,500 miles and more across the sea; and when every citizen of this same town of Providence was on perfect political equality with every other, and acknowleged the authority of no other. This was individual sovereignty, in actual operation. It did not, of course, continue long.

Another function of the towns was connected with their administration of justice and punishment of offenders. "Not only for troubled consciences," says Judge Durfee, "did the new accessions to their population come," but the settlement was also a refuge "for troublesome eccentricities. Adventurers came full of restless ardor, chafing at every restraint." "Men of vicious propensities came," also, "driven out of their old haunts, and seeking fresh fields for indulgence."

At the outset in both Providence and Portsmouth, "the major assent" of the freemen in open town-meeting was what decided cases of equity, impositions of penalty, and miscellaneous legal questions. It was before the Providence town-meeting, that Joshua Verin was brought, in May, 1637, and, to quote again from Judge Durfee,[1] "was tried, convicted, and disfranchised," for restraining liberty of conscience.[2] In September, 1638, the Portsmouth town-meeting summoned before its august presence, eight Portsmouth citizens, whom it tried, convicted, and sentenced, respectively, for the offence of drunkenness and rioting.[3] In another instance, the Portsmouth town-meeting condemned and divided the property of

[1] Durfee's "Gleanings from the judicial history of Rhode Island," p. 2.
[2] See the original record, R. I. Col. Records, I., p. 16.
[3] R. I. Col. Records, I., p. 60.

an absconding debtor.[1] There are some minor variations between the practice of Providence and that of Portsmouth. For instance, in the former town the administration of justice was committed to the whole body of citizens, with at first absolutely no discrimination. The next step was to select two "deputies." In Portsmouth, on the other hand, the citizens began by choosing one of their number "judge." Later in the same year, three "elders" were associated with him, "in the execution of justice and judgment."[2] Yet even they were obliged to make a quarterly account of their rulings, to the town-meeting (in early records designated "the Body"). The town-meeting, moreover, in every one of the Rhode Island towns, exercised from the outset the functions of a court of probate, nor did the creation of county organizations, in 1703, serve to indicate to these towns the desirableness of a transfer of these functions to a county court of probate, as in most other New England colonies. To this day, in fact, the only courts of probate in Rhode Island are, in the towns, the town council itself sitting in that capacity;[3] and in the cities, such a body or judge as may be appointed[4] by the city council for this purpose.[5]

From such beginnings, by a series of extremely slow accretions, and with modifications more slowly introduced than elsewhere, has developed the present judicial system of Rhode Island.[6]

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[1] Ibid., I., p. 62. Compare also the instance of capital punishment, cited by Governor Hopkins, in his History. (In R. I. Hist. Soc. Collections, VII., p. 38.)

[2] R. I. Col. Records, I., p. 64.

[3] "Public statutes of Rhode Island," 1882, ch. 179, sec. 1.

[4] Ibid., ch. 179, sec. 2. The town councils have the option of appointing a "judge of probate," but have seldom availed themselves of it.

[5] Another function exercised by the towns in Rhode Island, but usually by county officers elsewhere, is that of the care and control of highways. For a curious instance of the infelicitous working of this arrangement, see *Science*, Aug. 29, 1884, IV., p. 175, *note*.

[6] Its growth and development have been traced by Chief Justice Durfee, of the Rhode Island Supreme Court, in his recent monograph, "Gleanings

Another function exercised by these towns was connected with financial administration. This has always been recognized as an indispensable accompaniment of local self-government; and there is therefore nothing noteworthy about it except as connected with its re-appearance after the union. There can be no doubt that a hesitation on this point lay at the foundation of much of the reluctance to enter into the union.

Passing now from our consideration of the origin, the characteristics, and the functions, of those towns before the year 1647, let us examine the frames of government successively imposed upon Rhode Island by the Patent adopted in 1647, by the Charter of 1663, and by the various modifications subsequently introduced; and notice how the pronounced independency of these early town governments gave character to it all.

Government under the Patent of 1643–4.

The General Assembly of 1647 was the beginning of legislative action in Rhode Island; and in organizing under the Patent obtained three years before, it adopted as its fundamental body of laws, "that remarkable piece of colonial legislation" as Judge Durfee designates it,[1]—"the code of 1647." By this code a legislative body was created (consisting of a president, 8 assistants, and 24 commissioners). But this scheme, unlike most systems of representative government, placed no power to originate legislation in the hands of these "representatives," with but a slight proviso. "All laws," says Arnold,[2] "were to be first discussed in the towns." When all four of the towns had acted upon the

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from the Judicial History of Rhode Island," (R. I. Historical Tracts, No. 18).

[1] Judge Durfee's "Gleanings," p. 6.

[2] Arnold, I., p. 203.

proposed law, *each by itself*, and not before, and favorably considered it, it was to be passed upon by the "General Assembly," whose action was thus simply a final ruling upon it. "Thus," says Arnold, "the laws emanated directly from the people." From this provision, says Governor Hopkins, "came the common story, that some towns had heretofore repealed acts of the General Assembly."[1]

Another provision of the code deserves consideration, as showing the exceeding jealousy with which these colonists looked upon the assumption of authority by *any* man. Namely, that no person should "presume to beare or execute any office, that is not lawfully called to it and confirmed in it," nor presume "to do more or less" than he was expressly authorized to do.[2] They believed in no "loose construction" of their "constitution." The most striking feature of the code is that connected with the question of sovereignty, as it concerned Great Britain. Nothing has been more common in the granting of privileges by a royal government to a colony or dependency, than to enumerate certain rights, and cover the rest by a general provision which entitled the colony to whatever was not at variance with the laws of the home government. Was this the case with Rhode Island? Hardly. "Wee do agree," they say, "to make such lawes and constitutions," (i. e., conformable to the laws of England) "so far as the nature and constitution of our place will admit."[3] Instead of shaping their laws to those of Great Britain, they were willing to adopt such of the laws of the home government as would conform to theirs. And the surprising fact in connection with it is, that, in this, they were but following the language of their Patent, as granted by the English government.

We have said that these towns, and later the colony, owed

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[1] R. I. Hist. Soc. Collections, VII., p. 45.
[2] R. I. Col. Rec., I., p. 197.
[3] R. I. Col. Records, I., p. 158.

allegiance to no one but the government of Great Britain across the sea. One might almost go farther and say, in view of this remarkable provision, that they regarded themselves largely as independent even of that. It is true that at this time the King was not on his throne, and that the ascendency of the parliamentary and revolutionary government might be supposed to have loosened and unsettled for the moment the ordinary ties of allegiance. It is true, that when in 1663, the extraordinarily liberal charter of the colony was obtained from Charles II., the Rhode Island government failed not in its formal acknowledgment of his rule. But it is also true, and it should never be overlooked, in tracing the growth of that spirit of independence in this colony, which led to the independent principles and the resolute deeds of the revolution, that the colony *started* on a basis which almost wholly ignored any outside authority whatever. It had its origin in towns which were politically independent. And that same spirit of independence was transmitted to the colonial organization.

If, now, we examine the operation of government since 1647, we shall be no less struck with the survival of this early spirit of independence, growing out of the town governments. A formal union had taken place under the first patent. But when in 1651 William Coddington obtained from the home government the act which placed in his hands the long-desired supremacy, the stability of this colonial union received its first test. It yielded. The colony fell apart. Again, as at the beginning, Portsmouth and Newport acted together. Providence and Warwick, left thus to themselves, formed a separate government. The government of the towns, not indeed each one by itself, but by twos in combination, was resumed. Doubtless, if the tendency had not been arrested, the next step would have been to the original condidition ;—the government of each of the four towns, independent of every other.

The Charter of 1663.

But the tendency was arrested. There were enough of the citizens who were by this time convinced of the absolute necessity for joint action, to unite in sending Roger Williams and John Clarke to England to secure still further charter rights. Unfortunately, the instructions which they received, if any, have not been preserved, so that we are unable to judge whether the distinct advance which the charter of 1663 marked in the direction of a stronger central government, was or was not expressly authorized by the colonists. It probably was not, and undoubtedly was exceedingly distasteful to them. But none the less, it was felt to be a tendency which was inevitable and imperative.

In the patent adopted in 1647, no attempt had been made to declare or prescribe the boundaries of the new colony. The charter of 1663, however, did attempt this, and for the first time expressed in formal, official, language, what the colony claimed for itself. This was in 1663. Not until 1747 was the last of these lines fully settled and determined, and the right of possession of the territory by Rhode Island formally acknowledged by the neighboring colonies. And this is a consideration of no slight importance in considering the gradual growing together of the Rhode Island towns into one government, and the overcoming of the centrifugal by a centripetal tendency. In the days of 1787 to '89, when the union of thirteen somewhat inharmonious States was the one thing ardently hoped for, there was a toast which went freely circulating about the country,—"A hoop to the barrel!" This colony of Rhode Island in its early history needed a hoop badly enough, to be sure. Yet it may be considered to have had one in the pressure it experienced from its hostile neighbors, in the steady encroachments of the adjoining colonies on the territory which it claimed, and in the uncompromising hostility with which its planting and its rise were regarded by them. It was this constant, though unfriendly

pressure which became one of the strongest agencies in compacting the colony into shape.

Andros's Measures.

Yet the centrifugal tendency was not altogether a thing of the past when the last quarter of the 17th century was reached, and when the advent of Sir Edmund Andros, with his measures of radical reconstruction, once more, and for the last time, dissolved the union which had constituted the colony of Rhode Island, and threw it back into its original state of town organizations simply. It was a singular proceeding, and one well worthy of careful study. Not so much a revolution, as a resumption of original relations which had been interrupted. Not an act of violence and anarchy, but apparently, under the circumstances, the only natural step to take.

No more marked difference can be conceived of than that between Rhode Island and the other New England colonies, in relation to what is known as the usurpation of Andros. In the other colonies it was an interruption of ordinary relations, and an interference with the exercise of every orderly function of government. But in Rhode Island before 1647, says Arnold,[1] "each town was in itself sovereign, and enjoyed a full measure of civil and religious freedom. They had now only to fall back upon their primitive system of town governments to be as free" as before.[2] On the 29th of June, 1686, the General Assembly voted that it should be "lawful for the freemen of each town in this collony to meet together," and make all necessary provision "for the managing the affairs of their respective towns."[3] The Assembly then dissolved. In

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[1] Arnold, I., p. 487.

[2] R. I. Col. Rec., II., p. 191.

[3] In the interval between 1647 and 1686, however, 4 new town governments had been organized;—King's Towne and Westerly in the Narragansett Country; and Jamestown and New Shoreham, on the Islands.

1690, the government under the charter was as peacefully resumed as it had been set aside, the interference of the royal agent being now at an end. In all these occurrences the principle assumed as a basis of action, without apparently a question or protest, was, that these separate, independent town organizations had at their own pleasure united in 1647 in a league for their mutual welfare and defence;—a league which was subject to dissolution at any time by these same independent towns, at their pleasure. This was the theory upon which they acted in 1686; and it bears a striking resemblance to the extreme theory of States-rights, or secession, as applied to States;—the theory upon which the hesitating States defended their attitude in 1787–89, in delaying to ratify the United States constitution; the theory on which the States of Virginia and Kentucky acted in the passage of the disorganizing "Resolutions of 1798," and "Resolutions of 1799"; the theory on which the thirteen Southern States acted in 1861, in withdrawing from the Union.

A Local Rhode Island Sentiment Created.

How the existence of this principle and this spirit in Rhode Island, passed gradually from an insistence on local town sovereignty, as opposed to the claims of a centralized colonial government, to an insistence on colonial and state sovereignty, as opposed to a centralized national government, is now to be considered.

How did this take place? The answer is, that the once heterogeneous community of which the colony of Rhode Island was made up, had become by slow and gradual stages an extremely homogeneous community. Homogeneous, indeed, it could not help becoming. After the first generation of its settlers, immigration from without was not encouraged, and for years its families went on marrying and inter-marrying, with an almost inappreciable infusion of outside blood. Traditions, handed down through successive generations, deep-

ened and intensified the strongly local sentiment which early in the history of Rhode Island had become a predominant and characteristic feature of the colony. It scarcely needed the steady, unremitting pressure of hostile encroachment from without,—which, however, was never absent,—to cause this tendency to pass, as it were, into the very blood of Rhode Island citizens.

Functions of the General Assembly.

It is an interesting study to notice in what form this local tendency manifested itself, after the colonial government had secured a firm foothold, as opposed to the separate town governments. As was natural, this was to be seen in the prominence given to the legislative branch of the colonial government, at the expense of the executive and judicial. The General Assembly, that body which in its organization came nearest to a connection with the popular will, never abandoned the position of superiority in which the original patent had placed it; and while it has since then strengthened itself as compared with the power possessed by the towns, it has never suffered either the executive or the judicial departments to gain a position of relative preponderance over it.

If the patent of 1643 be compared with the charter of 1663, as regards the powers committed to the General Assembly, it will be seen that while the remarkable restriction by which the originating of legislation was originally devolved upon the towns had disappeared; and the General Assembly, as constituted in 1663, was invested with full power and authority "to make, ordeyne, constitute, or repeal, such laws, statutes, orders and ordinances,"[1] as it shall decree;—yet so apprehensive were the towns of any tendency to drift away from "the people," that the election of delegates to this body was to recur so often as once in six months. For no longer

[1] R. I. Col. Records, II., p. 9.

period were the towns willing to entrust the management of their affairs to the body which they themselves had created. At every meeting of the General Assembly, moreover, regular or adjourned, the charter was to be formally read.

Another feature of no less importance in this connection is the attempt, made with great determination and persistency, to connect this semi-annual session of the colonial government as really and fully as possible with the actual, individual, undelegated suffrages of every citizen of every town. At the outset, in so small a colony as this, it was possible; and twice a year, therefore, in May and October, the citizens themselves, of Providence, of Warwick, of Portsmouth,—of whatever part of the State,—assembled in person at Newport, and there in solemn council cast their votes for those who they decreed should deliberate for them for the ensuing six months.[1] This over, they returned to their homes, having inaugurated the session, so to speak, and left it to run of itself for the remainder of the time. Of course, the natural tendency of any such system as this was to a gradual modification by reason of the inconvenience and even impossibility of personal attendance, in many instances; and this was met by the gradual introduction of the system of proxy votes. But the votes of the citizens, personal and by proxy, continued to be cast *at Newport*, until 1760.[2] Thus closely was the General Assembly linked with the actual assemblage of the people of the colony.

But if its relations to the people, on the one hand, were thus interesting and intimate, no less interesting was its relation, on the other hand, to the executive and judicial departments of the government. Indeed, that relation might almost be expressed by the word "identity." Let us see how it was in the case of the executive. Look at the language of

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[1] Compare Freeman's "Growth of the English Constitution," etc., (Tauchnitz ed.), pp. 17–23.

[2] R. I. Col. Records, VI., pp. 256–57.

the charter. It reads: "The governor, or in his absence, or by his permission, the deputy-governor of the said company, for the time being, the assistants, and such of the freemen of the said company as shall be so as aforesaid, shall be called the General Assembly." That body, therefore, "called the General Assembly" *consists*, not merely of the "deputed" freemen called "deputies" and of "assistants," but also of the governor himself, or the deputy-governor. The governor was *one of* the General Assembly. Had he any power apart from it? In 1731 an occasion arose for testing this question. Governor Jencks, justly disapproving of the act of the General Assembly by which an issue of "bills of credit" to the amount of £60,000 had been decreed,[1] "negatived" the bill. His power to do this was immediately questioned. The question went by appeal to the law officers of the Crown,[2] in London, and the decision[3] there reached by an examination of the provisions of the charter sustained the claim of the General Assembly, and settled it that "in this charter no negative voice is given to the governor," and that when the governor is present "he is merely a part of the assembly and included by the majority."

And he has no veto power to-day. In this particular, Rhode Island stands almost alone among the 38 States, Delaware, North Carolina, and Ohio being the only others whose governor has no veto.

Look now at the relation of the General Assembly to the judicial department. It *was* the court, at first and for a long time. Just as in Massachusetts the "General Court," as it was designated, exercised judicial, as well as legislative functions,—so in Rhode Island, the code of laws adopted in 1647, constituted the General Assembly "a Generall Court of Tryalls for the whole Colonie."[4] In like manner the charter of 1663

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[1] R. I. Col. Rec., IV., pp. 454.

[2] The Attorney General, P. Yorke; and the Solicitor General, C. Talbot.

[3] John Carter Brown MSS., Nos. 582, 566, 567.

[4] R. I. Col. Rec., I., p. 191.

established the same arrangement under the new organization. "The charter," says Judge Durfee, "did not *create* judicial tribunals, but empowered the General Assembly to create them; and accordingly the General Assembly, at its first session under the charter, provided that the governor or deputy governor, with at least six assistants, should *hold* "the general court of trials."[1] It was not until 1729 that the "Inferior court," the "Court of Common Pleas," was established. It was not until 1747, that a "Superior Court" was established, which should, in the functions which it exercised, supersede the General Assembly, (i. e., the governor and assistants). By the act passed in that year, there was now to be, in the place of the governor and assistants, "a chief judge and four assistants." But it would be a mistake to suppose (and this has been very lucidly traced by Judge Durfee,[2] in his interesting monograph), that the General Assembly hereupon relinquished all claim to the exercise of judicial functions. By no means. The result was, that the two bodies came, more than once, into collision with each other. In 1752, the case of Mawney *vs.* Peirce came up to the Superior Court, in the regular course, and was decided in favor of the plaintiff. Thereupon the unsuccessful party appeared before the General Assembly, as before a *court* having appellate jurisdiction, and petitioned for a new trial.[3] And it was granted him. The General Assembly thus deliberately overruled the decision of the highest actual judicial authority in the colony. The case of Trevett *vs.* Weeden in 1786 is too well known to need more than bare mention. In this case also, the General Assembly was astounded that the Superior Court had declared one of its acts of legislation unconstitutional, and actually summoned the judges before it, and compelled them to answer for their action. Judge Durfee

[1] Judge Durfee's "Gleanings," p. 11.
[2] Judge Durfee's "Gleanings," pp. 58–65.
[3] R. I. Col. Rec., V., p. 359.

remarks, that there were not a few who maintained "that after the revolution[1] (the English revolution), the General Assembly of Rhode Island was as omnipotent as the parliament of England."

Since the decision rendered by Chief-Justice Ames in 1856, and the action of the General Assembly in 1860, the General Assembly, says Judge Durfee, "has never intentionally at least, encroached upon the proper province of the judiciary."

We have been thus minute in touching upon the predominance of the General Assembly in the organization of the colonial government, because it represented, so very perfectly and intimately, the survival of the spirit of local town authority.

Survival of the Local Sentiment.

To quite a late period, the towns still kept alive a very vigorous flame of the same local spirit. Perhaps one of the most striking instances to be met anywhere in the annals of Rhode Island, is one which occurred late in the eighteenth century. The town in question was the town of Scituate, not one of the original four towns, but one created in 1731, by an act of the General Assembly.

Coddington's commission, in 1651, had been held to dissolve, virtually, the colonial government under the existing patent. Andros's usurpation, likewise, in 1686, was considered as again resolving the government into its elements. Did the Declaration of Independence, in 1776, possess similarly significant powers of dissolution? Here was a town government which held that it did. In the paper drawn up by a committee of the town of Scituate, dated April 28, 1777, (the chairman being a distinguished general of the revolution), it was maintained[2] that upon the Declaration

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[1] Judge Durfee's "Gleanings," p. 55.

[2] Arnold, II., p. 400. The original is in Foster papers, II., p. 19.

of Independence, the charter became void, and hence that no legal government existed in the State; and that "upon the Declaration aforesaid, the power again vested in the people where, we are convinced it still remains, as we do not find the people have, since that time either by any person legally authorized by them or themselves fixed any settled form of government." In the view of this committee, therefore, what had been the "Colony of Rhode Island and Providence Plantations" was at that moment reduced once more to a government by towns, and immediate steps towards placing the government again on a deliberately-organized political basis were imperatively necessary.

However sound this view of the case may have been, it does not appear to have been shared by any other of the 29 towns then existing, and the "State of Rhode Island and Providence Plantations," obstinately refusing to be regarded as non-existent, continued to exercise the functions of government.

We may also glance briefly at the somewhat remarkable phase which the process of development took, in one of the four original towns,—the town of Providence. It started, as was noticed, with a pure democracy, purer than has been witnessed anywhere else in the world unless it be the Ekklesia of ancient Athens, or the assemblies of certain Swiss cantons. Inevitably, a system of representation came to be introduced. The power, for instance, of deciding on the allotment of certain disputed lands, or the punishment of certain offences, was delegated to certain officers, known as deputies. Those who constituted "the people" remained an unchanged body until a new element gradually made itself manifest. Persons began to be received as townsmen who were not, and who did not become owners of land,—"purchasers," "proprietors." Hereupon was introduced a line of distinction which soon established a very marked and noticeable division. On the one hand, the "proprietors," on the other, the non-proprietors,—the simple townsmen. As is very evident, here

were the very conditions needed for the development of an aristocracy.

That in fact *is* what resulted from it, though only after slow stages, and with many protests and efforts at resistance. Gradually the form of government became a close corporation. The original purchasers who received each one hundred acres, admitted some years later, certain other purchasers, who received each twenty-five acres. "The whole number of purchasers," however, says Staples, "never exceeded one hundred and one persons."[1] Their successors in the corporation were their heirs and grantees. Gradually there grew up, outside of this landed aristocracy, a body of citizens interested in the conduct of the town's affairs, and desirous of having a voice in it. The purchasers began in 1662, says Staples, "to hold meetings distinct from town-meetings, for the transaction of business relating to the propriety, but they had the same clerk, and used the same record book till 1718."[2] What was the status of the body of citizens which lay outside of this circle, and which in each succeeding year was becoming more numerous, both by accessions from without and by the natural increase of population? These men could become "freeholders,"—this the colony charter provided for,—but they could never become proprietors. Thus were developed, in conflict with each other, on the one hand an aristocracy based on land, and on the other, a class equally desirous of representation in the government, but studiously kept from attaining to the privileges of the "proprietors." Without expressing any view as to the wisdom or expediency of this course, we may recognize it as a sufficiently singular departure from the pure democracy of the earliest times. The action, however, says Mr. Dorr, by which the proprietors became a close corporation, and rigidly insisted on the line of separation, was

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[1] Staples's "Annals," p. 60.
[2] Ibid., p. 131.

not taken without a struggle on the part of many of the proprietors themselves.[1]

Looking now at this tendency to town action,[2] and town sentiment, as a characteristic of Rhode Island government, from the first, it is seen to have been at all times a predominating tendency. It was inevitable that when in the years, 1774 to 1790, Rhode Island was brought into association with the other colonies, and finally in 1790 became a part of the Union, this principle should continue to characterize her action. In the structure of government and law, which, by slow and gradual advances became embodied in the constitution of the United States, these are elements which can be traced to this one and that one of the thirteen original colonies. What elements in it are to be traced to Rhode Island? Two,

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[1] The connection above cited as existing between the proprietorship of land and the development of an aristocratic element in government, at Providence, is sufficiently curious, but it is not the only Rhode Island instance. For another instance, see the peculiar state of society in the Narragansett Country, as described in Dr. Channing's paper on "The Narragansett Planters."

[2] The city of Providence, (which exchanged a town government for a city charter in 1832, and which has grown in these 54 years from a population of less than 20,000, to nearly 120,000, is perhaps the only instance of a city similarly organized which still continues to hold an annual town-meeting, though, in some instances, as in the case of Hartford, Conn., there is an organized municipality within, and forming a part of a larger territory bearing the same name, and governed by town officers. This town-meeting, always called for the consideration of precisely the same business,—the administration of certain valuable lands and funds bequeathed in 1824 to the then town of Providence, is a curious survival of an old institution. The stranger in Providence, on the 20th of December, 1884, would have had his attention arrested by the clanging of bells from four church towers, and on entering the room designated for the town-meeting, would have witnessed the choice of a moderator, the ordinary routine of motions, votes, and speeches, as in any village town-meeting, and perhaps an undercurrent of humorous enjoyment of the experience. This town-meeting is held in consequence of certain provisions in the will of Ebenezer Knight Dexter, dated May 28, 1824, and recorded in Providence Wills, XIII., p. 194.

above all. First, the separation of the civil and religious functions in government; second, the recognition of local self-government, as a tendency counterbalancing that in the direction of centralization. Yet both of these principles, though in themselves wise and desirable, may, if carried to an unbalanced extreme, become something quite the reverse. It is not difficult to see that Rhode Island has itself furnished a field for illustrating this tendency, as regards local government. Nowhere else has the tendency to centralization been encountered by a more thorough-going tendency to decentralization. No other State, even at present, has two capitals.[1] In no other State is there a provision analogous to that recognizing what is in effect a third seat of government, once in four years.[2] In no other is each one of the towns separately represented in the State Senate.[3] In no other State was the system of rotation among a half dozen different local centres,[4] of the successive sessions of the General Assembly, so long retained. In no other State was the original welding together of the various elements into one colony, so difficult a process and one which required to be several times repeated, in consequences of as many repeated dissolutions.[5] In no other State was the colony so direct an outgrowth,—or rather

[1] The last State, other than this, to retain the double-capital was Connecticut, which abolished it in 1873.

[2] By statute it is provided that, after each presidential election, the electors chosen in this State "shall meet at Bristol, in the county of Bristol." ("Public statutes of Rhode Island," 1882, ch. 12, sec. 6.)

[3] The States in which each *county* is separately represented in the upper house of the State Legislature, are by no means exceptional. The town, however, in Rhode Island, is here, as well as in other connections, the real unit.

[4] As an instance in point may be mentioned four successive sessions of the General Assembly, in the years 1789–90; (1) in September, at Newport; (2) in October, at East Greenwich; (3) in October–November, at South Kingstown; (4) and, in January, at Providence. On the following September, the session was held at Bristol. (R. I. Col., Records, X., pp. 338, 357, 362, 367, 388.)

[5] See pp. 10–12, 20–21, 23–24. Compare Foster's "Stephen Hopkins," II., 170, *note.*

creation,—of town organizations previously existing, and wholly independent of each other.[1] In no other State, moreover, had the principle of independence associated itself so strongly with the minds of the individual citizens, as well as the colony and the town.

In any consideration, moreover, of the refusal of the Rhode Island State government in 1787-90, to accede to the constitution of the United States, it is necessary to observe the close connection of this action with the predominatingly local characteristics which had so strongly marked the earlier stages of Rhode Island history. The national constitution then offered,—and later happily acceded to by this state,—was at the widest possible remove from those theories of local sovereignty, and those political methods of combination in the manner of a league merely, which had come to be the cherished doctrines of Rhode Island citizens. Those earlier Rhode Islanders, who, to use the language of Roger Williams, had "drank so deep of the cup of liberty," had found it difficult in the extreme to merge their independent town governments in a common colonial government in 1647. Their descendants, in 1787–90, found it no less difficult to merge their independent Rhode Island government in the common national government now proposed.

That the United States constitution is not "a compact between sovereign States," is a thesis which has been stoutly maintained,—and as warmly denied,—by the giants of debate in both houses of Congress. It is worth while to notice that in the minds of the Rhode Island legislators, who, in 1787–90, so desperately resisted the constitution, there was apparently no room for question on this point. As they regarded it, this national constitution was *not* a league between sovereign states. For that reason they opposed it with all their might.

Mr. Bancroft, the historian, in an address before the New York Historical Society, in 1866,[2] remarked that "more ideas

[1] See pp. 7–10.
[2] Jan. 2, 1866.

which have since become national have emanated from the little colony of Rhode Island than from any other." This colony has, in fact, been a sort of microcosm, in which there have been developed, on a smaller scale, the more important issues which have operated in a larger way on the stage of national government.[1] Nor should the significance of the long contest of 1787–90, in Rhode Island be misunderstood. The fact to which it points is not that a tendency had existed to emphasize unduly and to press to a most mischievous extreme, the local, as opposed to the national idea. That was inherent in the very nature of the State's political history up to that period. The fact of commanding importance is rather that, in the determined and even desperate encounter between these two tendencies in Rhode Island, the national principle here gained a decisive triumph,—how decisive may be seen from the fact (elsewhere cited by the present writer), that, "from this time on, so long as there was any active Federalist party, Rhode Island was a Federalist State."[2]

Briefly to recapitulate, we have seen that the political history of Rhode Island, in the eighteenth and nineteenth centuries, no less than in the seventeenth, is everywhere tinged by the influence of these early town governments of the seventeenth century. We have seen that the town governments ante-dated the colony; that they were of distinctly independent origin; that they embodied the political views of men originally averse to organized government; that the colonial government growing out of them was only very reluctantly and very sparingly entrusted with power by them; that the functions exercised by them before the consolidation were such as belong to independent governments; that the powers dele-

[1] Compare also the remark in a recent publication, apropos of Rhode Island:—"The diversity of character and interest in the smallest of the colonies is another illustration of the truth taught by Greek and Italian history, that it is not always the large States that afford the most instructive data for political history."—*The Nation*, Aug. 7, 1884, XXXIX., p. 117.

[2] Foster's "Stephen Hopkins," II., p. 154.

gated by the towns to the colonial government have been in at least two instances retaken from it and again exercised by the towns; that the predominance of this local, or town idea of government, has ever since the adoption of the colonial government under the charter, given character to the political development of Rhode Island. No one can traverse this interesting period of local history, moreover, without perceiving that, while there has been a gradual progress from the rudimentary to the more highly-organized forms of civil government, and from narrowly local to broader and more comprehensive political theories, yet this advance has required long periods of time for its issue and development. It is hardly fitting to judge of the present or the future, in the study of Rhode Island institutions, otherwise than as related to what we thus know of the past.

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